

E-272, 125/SA-91-829 ORDER APPROVING SETTLEMENT OF SERVICE-
TERRITORY BOUNDARY DISPUTES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Thomas Burton
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition of
Lyon-Lincoln Electric
Cooperative and Marshall
Municipal Utilities to Adjust
Their Mutual Service-Territory
Boundary

ISSUE DATE: April 17, 1992

DOCKET NO. E-272, 125/SA-91-829

ORDER APPROVING SETTLEMENT OF
SERVICE-TERRITORY BOUNDARY
DISPUTES

PROCEDURAL HISTORY

On October 25, 1991, Lyon-Lincoln Electric Cooperative (the Cooperative) and Marshall Municipal Utilities (the City) filed a joint petition for approval of a Stipulation dated September 25, 1991 (hereinafter referred to as the "settlement agreement.") The settlement agreement aimed to resolve all the service boundary disputes between the parties, including those addressed in the following dockets: E-272, 125/SA-90-260 involving rights to serve the Edward D. Jones Company; E-272, 125, SA-90-484 involving service to the Minnesota Department of Transportation (MN/DOT) garage expansion; and E-272, 125/SA-90-527, the Cooperative's request for compensation from the City for loss of service territory. The Cooperative/City's joint petition was assigned this docket number: E-272, 125/SA-91-829.

On December 2, 1991, the Minnesota Department of Public Service (the Department) filed its Report of Investigation and Recommendation regarding the parties' petition. The Department recommended that before holding a hearing on the proposal the Commission give notice to parties outside Marshall's municipal limits who would be affected by the proposed transfer of service territory from Lyon-Lincoln to Marshall.

On January 21, 1992, the Commission decided that it would give notice of the proposed settlement to property owners and affected customers inside as well as outside Marshall's city limits. The Commission directed the City and the Cooperative to file within 15 days a list containing the names and addresses of all property owners and customers, whether inside or outside the Marshall city limits, that would be affected by the proposed boundary changes as well as the addresses and names of the appropriate officials to be notified for the municipality, county and each township in which the proposed changes would take place.

On January 29, 1992, the City and the Cooperative jointly filed the list of persons to be served pursuant to the Commission's January 21, 1992 Order.

On March 18, 1992, the Commission sent notice of the time, place, and purpose of the Commission's April 7, 1992 meeting on this matter to all parties identified in the parties' January 29, 1992 filing.

On April 7, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

The Settlement Proposal and Commission Analysis

In general, settlements of boundary disputes are encouraged and will be approved if they are found to be in the public interest. The settlement proposed in this matter involves three different types of boundary changes each of which is governed by a different statute.

Territory Within the Municipal Limits Now in the Cooperative's Assigned Service Territory

The settlement provides that Marshall's service territory will expand to include six customers within its municipal limits who are currently in the Cooperative's assigned service territory and served by the Cooperative. In addition, Marshall's assigned service area will expand to include 18 customers inside municipal limits who are also currently in the Cooperative's assigned service area but who are served by the City rather than the Cooperative. Under the settlement agreement, the City will provide certain amounts of compensation to the Cooperative for each of these expansions.

Minn. Stat. § 216B.44 (1990) authorizes a municipality to extend its service territory within its corporate boundaries upon payment of appropriate compensation to any utility that is already "serving the area".

The Commission finds generally that the compensation the City will pay the Cooperative under this agreement has been fully and fairly negotiated by the parties and appears appropriate, as required by the statute.

Service Areas Outside City Limits

Under the settlement some Cooperative service territory outside the municipal boundaries transfers to the City and some City-served territory outside its municipal boundaries transfers to the Cooperative. These transfers are governed by Minn. Stat.

§ 216B.39, subd. 3 (1990) which authorizes the Commission to make changes in service boundaries of assigned service areas after notice and hearing as provided for in Minn. Stat. §§ 216B.17 and 216B.18.

The record demonstrates that prior to its April 7, 1992 hearing on this matter the Commission provided notice as required by the statute.¹ No party appeared at the hearing to oppose the settlement and the attendant boundary changes and the Department recommended approval.

Agreement to Allow Service Notwithstanding Boundary Changes

The settlement also describes the extent to which the Cooperative and the City, notwithstanding the boundary changes proposed in this settlement, will be allowed to serve new customers and continue to serve current customers in the transferred territories.

These kinds of agreements are authorized by Minn. Stat. § 216B.40 (1990). The statute allows a utility to serve a customer in another utility's assigned area if the assigned utility consents in writing. Commission approval of such agreements is not required. However, the Commission notes that these agreements appear to constitute a fair exchange of consideration and that they contribute substantially to petitioners' satisfaction with this settlement. As such they enhance the acceptability of the proposed settlement.

Finally, the Commission has a policy of encouraging settlement of service boundary disputes in order to minimize that diversion from the utilities' principal business, i.e. service to their subscribers. The petitioners state that this settlement resolves all their outstanding disputes. Those disputes are several: three proceedings before the Commission (Docket Nos. E-272, 125/SA-90-260, E-272, 125/SA-90-484, and E-272-125/SA-90-527) and two District Court actions (Lyon County District Court File Nos. C7-90-395 and C9-90-396.)

Commission Action

Based on the preceding analysis and particular findings made therein, the Commission concludes that the proposed settlement is in the public interest and will approve it.

¹ In addition, the Commission also gave notice to parties affected by the transfer of Cooperative service territory *within* the municipal boundaries to the City. As noted previously, Minn. Stat. § 216B.44 (1990) authorizes the City to add property inside its city limits to its service territory *without notice or hearing* upon payment of "appropriate value".

ORDER

1. The settlement agreement proposed by the City of Marshall and the Lyon-Lincoln Electric Cooperative dated September 25, 1991 is approved.
2. The Department of Public Service shall revise the official boundary service area maps to reflect the boundary changes approved herein.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)